AC Management, Inc., d/b/a Mayfield Holiday Inn *and* Service Employees International Union Local No. 47

3750 Orange Place Limited Partnership d/b/a Beachwood Holiday Inn *and* Service Employees International Union Local No. 47

Snavely Development Co., Inc. a/k/a Snavely Management Services and its wholly owned subsidiary, Snavely Hotel Services, LLC *and* Service Employees International Union Local No. 47. Cases 8–CA–28382–1, 8–CA–28382–2, and 8–CA–29904

August 23, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On April 29, 1999, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondents filed exceptions and supporting briefs, the General Counsel and the Charging Party filed answering briefs, and the Respondents filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Orders as modified.[1]

The judge found that Respondent Snavely Development Co., Inc. a/k/a Snavely Management Services (Management Services) and its wholly owned subsidiary, Snavely Hotel Services, LLC (Hotel Services) constituted a single employer within the meaning of the Act. We agree with the judge for the reasons he states.

The judge also found that Respondent 3750 Orange Place Limited Partnership, d/b/a Beachwood Holiday Inn (Orange Place) and Respondent Management Services were joint employers of the Beachwood Holiday Inn (HIB) employees from May 13, 1996. He cited common ownership, management, and interrelationship of operations. We agree with the judge for the following reasons. To establish that two employers are joint employers, the entities must share or codetermine matters governing essential terms and conditions of employment. *M. B. Sturgis*, 331 NLRB 1298, 1301 (2000). As we have stated before:

> To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.[2]

In this respect, Management Services' president, James Gerish, testified that pursuant to Orange Place's agreement with Management Services, the latter hired, discharged, trained, disciplined, and scheduled HIB housekeeping department employees. Indeed, the agreement states that Orange Place gives Management Services "the power and authority . . . [t]o hire, discharge, train and pay . . . all employees . . . as may be reasonably necessary for the operation of the business, and to determine suitable compensation levels for all such employees." Accordingly, Orange Place and Management Services administered a common labor policy and constitute joint employers.

The judge ordered the Respondents to bargain in separate units of housekeeping employees located at Mayfield Holiday Inn (HIM) and HIB, respectively.[3] We agree.

The historical unit consisted of housekeeping employees at HIM and HIB in one unit under common ownership. Early in 1996, HIM and HIB were sold to separate owners. Shortly thereafter, the Union requested bargaining on behalf of housekeeping employees with each of

[1] We correct minor inadvertent errors in the judge's recommended Orders.

[2] *Laerco Transportation*, 269 NLRB 324, 325 (1984). See also *M.B. Sturgis*, supra, and *Reading Rock, Inc.*, 330 NLRB 856, 860 (2000).

[3] The judge found that the "former single multi-location bargaining units" continued to be appropriate. (Although the judge used the word "units," it is clear that the original unit was a single multilocation unit.) Respondents Orange Place and Management Services specifically excepted to the judge's finding "that a 'multi-location unit' of two separate and distinct employers with no relationship between them of any kind" be required to bargain with the Union. We do not read the judge's finding to require what the Respondent claims. Indeed, as his recommended Order demonstrates, he has directed the Respondents to bargain in two separate units of housekeeping employees located at HIM and HIB.

Rather, we believe that the judge was simply stating that the description or scope of the former unit continued to be appropriate. Thus, in the former single multilocation unit, the Union represented only housekeepers/maids and housemen. It seeks to continue to represent only housekeepers/maids and housemen in two separate units. The Respondents argued that, following the sale of the hotels and the reorganization of the housekeeping departments, the only appropriate units would comprise not only housekeepers/maids and housemen, but also laundresses and inspectresses. The judge rejected that argument, finding that the "former single multi-location bargaining unit[]" continued to be appropriate. The judge found that while the units advocated by the Respondents ("overall" units of all categories of workers) may be appropriate, the units sought by the Union (housekeepers/maids and housemen) were appropriate as well. His bargaining orders thus correctly reflect the units sought by the Union: the original unit divided into two, one for each hotel, comprising the same categories of workers as the original unit.

the two separate owners, thereby seeking to continue the bargaining relationship in two separate units.

The General Counsel alleged in the complaint that these two new owners were *Burns*[4] successors obligated to recognize and bargain with the Union in two separate units both of which are appropriate bargaining units.

In *Rock-Tenn Co*., 274 NLRB 772 (1985), the Board clarified a two-plant unit into separate units where the two plants had been sold to separately incorporated operating divisions of the employer. The Board found that the sale's significant organizational changes constituted "compelling circumstances" for disregarding the two-plant bargaining history.

The Board invoked *Rock-Tenn* in an unfair labor practice context in *Gibbs & Cox, Inc*., 280 NLRB 953 (1986). That case held that the respondent employer was not privileged to withdraw recognition from the union and make unilateral changes with respect to employees at one location in a historically merged multilocation unit. However, the Board noted that:

> multi-location bargaining units do not necessarily endure forever under Board precedent, regardless of changing circumstances. When changes in the organizational structure or operations of an employer render a single unit inappropriate, "compelling circumstances" may thereby exist for disregarding the bargaining history on the single-unit basis. [*Gibbs & Cox*, supra at 956 fn. 14.]

It is clear here that the sale of HIM and HIB to separate entities constitutes "compelling circumstances" warranting the change from the historic two-location unit to two separate units.[5]

As noted above, the historical unit consisted of housekeeping employees.[6] Respondents Orange Place and Management Services argue that the unit has significantly changed and that laundry workers and inspectresses should be included in the unit.[7] In this respect, Gerish testified that Respondents "have a team approach to the housekeeping department" that included inspectresses and laundry workers along with housekeepers and housemen or houseporters. He stated: "they all help out under the direction of the operations manager and the general manager." The Respondents also cite certain payroll records of the predecessor HELP which once included two inspectresses in the housekeeping department. The Respondents offer no other evidence.

We are guided by the following:

> Regarding the appropriateness of historical units, the Board's longstanding policy is that "mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness." *Indianapolis Mack Sales*, 288 NLRB 1123 fn. 5 (1988). The party challenging a historical unit bears the burden of showing that the unit is no longer appropriate. Id. The evidentiary burden is a heavy one. See, e.g., *Children's Hospital*, 312 NLRB 920, 929 (1993) ("'compelling circumstances' are required to overcome the significance of bargaining history"); *P.J. Dick Contracting*, 290 NLRB 150, 151 (188) ("units with extensive bargaining history remain intact unless repugnant to Board policy").[8]

The record shows that the job duties for housekeeper/maid and housemen did not change in any signifi-

[4] *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), holding that when a successor employer takes over a predecessor employer's business and operates it in substantially the same form with a work force, a majority of whom were employed by the predecessor, it must recognize and bargain with the union that represented the predecessor's employees. Id. at 280–281. We agree with the judge that the Respondents are *Burns* successors. Our decision is consistent with a long line of Board decisions finding substantial continuity when the successor employer has taken over only a discrete portion of its predecessor's bargaining unit, e.g., where the successor has acquired only a fraction of the workplaces within a multisite bargaining unit. See *NLRB v. Simon DeBartelo Group*, 241 F.3d 207, 212 and fn. 8 (2d Cir. 2001) (citing cases). See also *Bronx Health Plan*, 326 NLRB 810, 812 (1998), enfd. mem. 203 F.3d 51 (D.C. Cir. 1999). ("It is well established that the bargaining obligations attendant to a finding of successorship are not defeated by the mere fact that only a portion of a former union-represented operation is subject to a sale or transfer to a new owner so long as the employees in the conveyed portion constitute a separate appropriate unit and comprise a majority of the unit under the new operation.")

Chairman Hurtgen finds it unnecessary to rely on *NLRB v. Simon DeBartelo Group* and *Bronx Health Plan*, supra. He notes that, in this case, the original unit simply divided into two units, one for each hotel, with employees in the same job classifications as in the original unit. There was no extreme diminution of the original unit with accompanying changes in job classifications and functions.

[5] Chairman Hurtgen agrees that, in the instant case, a single bargaining unit can no longer be appropriate. That is, the HIM unit is owned by one employer, and the HIB unit is owned by another. It is clear that a two-employer unit is inappropriate, absent the agreement of the employers. Thus, the sale of the hotels to separate employers is a "compelling circumstance" rendering the combined unit inherently inappropriate. And, the current units are single location units which are presumptively appropriate. That presumption has not been rebutted. Accordingly, there was an unlawful refusal to bargain in each of the separate units, and a bargaining order should issue in each of these units.

[6] The classifications included in the unit are housekeeper/maid and houseman or houseporter.

[7] Respondent A.C. Management, Inc., d/b/a Mayfield Holiday Inn did not except on this point.

[8] *Trident Seafoods, Inc*., 318 NLRB 738 (1995).

cant measure between the time that the predecessor employers operated HIB and the time that Respondents operated HIB. Nor has there been a change in the degree to which laundry workers assist the housekeepers/maids and housemen. In this regard, Union Business Representative Dennis Dingow testified that, under the predecessor employers, laundry workers pitched in and helped the housekeeping staff at times of high occupancy. In these circumstances, the conclusory testimony concerning team work, without specific evidence, does not constitute a "compelling circumstance" sufficient to overcome the significance of bargaining history. Last, the fact that the predecessor carried two inspectresses on the housekeeping payroll says nothing about their current and actual work conditions. We therefore agree with the judge that the historical unit of housekeeping employees is appropriate.

Accordingly, we adopt the judge's recommended Orders as modified below.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that

A. Respondent AC Management, Inc., d/b/a Mayfield Holiday Inn,[9] Mayfield Village, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(b) and (c), respectively.

"(b) Furnish to the Union, in a timely fashion, the information requested by its letter on March 11, 1996.

"(c) Within 14 days after service by the Region, post at its facility in Mayfield Village, Ohio, copies of the attached notice marked "Appendix A."[10] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notice to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 19, 1996."

2. Substitute the attached Appendix A for that of the administrative law judge.

B. Respondents 3750 Orange Place Limited Partnership, d/b/a Beachwood Holiday Inn and Snavely Development Co., Inc. a/k/a Snavely Management Services and its wholly owned subsidiary, Snavely Hotel Services, LLC,[11] Beachwood and Willoughby Hills, Ohio, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified and set forth in full below.

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Service Employees International Union Local No. 47 in good faith as the exclusive bargaining representative of the employees in the following appropriate unit:

> All housekeeping employees employed by Respondents Orange Place, Respondent Management and Respondent Hotel Services at its 3750 Orange Place, Beachwood, Ohio facility, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to supply the Union, on its request, relevant information reasonably necessary for the proper performance of their duties as the exclusive bargaining representative of the employees in the bargaining unit.

(c) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with Service Employees International Union Local No. 47 as the exclusive collective-bargaining representative in the respective unit concerning terms and conditions of employment and, if understandings are reached, embody the understandings in a signed agreement.

(b) Furnish to the Union in a timely fashion, the information requested by its letters of May 6 and 24, 1996, and May 4, 1998.

(c) Within 14 days after service by the Region, post at its facilities in Beachwood and Willoughby Hills, Ohio,

[9] We leave to compliance the remedial obligations, if any, of Village Development and Cornerstone Company at HIM, and the remedial obligations, if any, of Patriot at HIB.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[11] We leave to compliance the remedial obligations, if any, of Patriot American Hospitality at HIB.

copies of the attached notice marked "Appendix B."[12] Copies of the notice on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 29, 1996."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain collectively with Service Employees International Union Local No. 47 in good faith as the exclusive bargaining representative of our employees in the following appropriate unit:

All housekeeping employees employed by us at our facility located at 780 Beta Drive, Mayfield Village, Ohio, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL furnish to the Union, in a timely fashion, the information requested by its letter of March 11, 1996.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

AC MANAGEMENT INC., D/B/A MAYFIELD HOLIDAY INN

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
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The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain collectively with Service Employees International Union Local No. 47 in good faith as the exclusive bargaining representative of our employees in the following appropriate unit:

All housekeeping employees employed by Employers Orange Place, Management Services, and Hotel Services at its 3750 Orange Place, Beachwood, Ohio facility, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL furnish to the Union, in a timely fashion, the information requested by its letters of May 6 and 24, 1996, and May 4, 1998.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

[12] See fn. 10, above.

3750 ORANGE PLACE LIMITED PARTNERSHIP d/b/a BEACHWOOD HOLIDAY INN, SNAVELY DEVELOPMENT CO., INC. a/k/a SNAVELY MANAGEMENT SERVICES AND ITS WHOLLY OWNED SUBSIDIARY, SNAVELY HOTEL SER-VICES, LLC

Steven D. Wilson, Esq., for the General Counsel.
Sanford Gross, *Esq*. and *Robert L. Gross, Esq*., of Willoughby Hills, Ohio, for Respondent Beachwood Holiday Inn.
Lou D'Amico Esq., of Mayfield Village, Ohio, for Respondent Mayfield Holiday Inn.
Bryan O' Connor, Esq., of Cleveland, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on January 19 and 20, 1999, in Cleveland, Ohio, pursuant to an amended consolidated complaint and notice of hearing (the complaint) issued by the Regional Director for Region 8 of the National Labor Relations Board (the Board) on August 31, 1998. In addition, on September 16, 1998, Region 8 issued an amendment to the amended consolidated complaint. The complaint, based on original charges in Cases 8–CA–28382–1 and 8–CA–28382–2 filed on July 11, 1996,[1] and an original and amended charge in Case 8–CA–29904 filed by Service Employees International Union Local No. 47 (the Charging Party or Union) alleges that AC Management, Inc., d/b/a Mayfield Holiday Inn (Respondent AC or Mayfield Holiday Inn) and 3750 Orange Place Limited Partnership d/b/a Beachwood Holiday Inn (Respondent Orange Place or Beachwood Holiday Inn) and Snavely Development Co., Inc. aka Snavely Management Services and its wholly owned subsidiary, Snavely Hotel Services, LLC (Respondent Management Services, Respondent Hotel Services or collectively as Respondents), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

Issues

The complaint alleges that Respondent AC, Respondent Orange Place, and Respondents have refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of multilocation units of housekeeping employees at the Mayfield and Beachwood Holiday Inns and likewise, have failed and refused to provide necessary and relevant information to the Union

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, and Respondent AC and Respondents, I make the following

[1] All dates are in 1996, unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

Respondent AC is a corporation engaged in the operation of a hotel with an office and place of business located in Mayfield Village, Ohio, where in conducting its business operations it derives gross revenues in excess of $500,000 and purchases and receives goods valued in excess of $5000 directly from points outside the State of Ohio. Respondent AC admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act. Respondent Orange Place and Respondents are engaged in the ownership, operation, and management of hotels with an office and place of business located in Beachwood and Willoughby Hills, Ohio, where in conducting its business operations it derives gross revenues in excess of $500,000 and purchases and receives goods valued in excess of $5000 directly from points outside the State of Ohio. Respondent Orange Place and Respondents admit and I find that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

For a number of years prior to October 1995, the Mayfield Holiday Inn and the Beachwood Holiday Inn was owned by Summit Associates, Inc. Summit selected Lane Hospitality to manage both hotels. Lane Hospitality recognized the Union as the designated collective-bargaining representative of a single unit of housekeeping employees at both facilities. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from May 1, 1994, to April 30, 1997.

In October 1995, Summit transferred the deeds on the properties to Citizens Service Corporation (the Bank), in lieu of foreclosure. On or about October 12, 1995, the Bank retained Beck Group Management, Inc. to operate the two facilities. Beck hired HELP, Inc. to manage both hotels. HELP, Inc. was responsible for hiring all hotel staff for both facilities including the housekeeping employees.

In a December 14, 1995 meeting, HELP, Inc. recognized and bargained with the Union as the exclusive collective-bargaining representative of its housekeeping employees at the Mayfield and Beachwood Holiday Inns.[2] Both hotels continued to be owned by the Bank and were managed by HELP, Inc. during this period up to and including February 1996.

[2] By letter dated December 5, 1995, HELP, Inc. agreed to meet with the Union on December 14, 1995 (GC Exh. 11). In a letter dated December 21, 1995, from HELP, Inc., Attorney Michael W. Hawkins to Union Attorney Joyce Goldstein titled "SEIU & Negotiations with HELP, Inc.," Hawkins provided the Union with a list of the housekeeping employees at the Mayfield and Beachwood Holiday Inns and their hourly rates. Hawkins also stated that HELP, Inc. was in the process of developing a contract proposal and should have something to discuss sometime in January (GC Exh. 12).

In February 1996, Respondent Orange Place purchased the Mayfield Holiday Inn directly from the Bank. Respondent Orange Place then assigned the Mayfield Holiday Inn back to the Bank, who in turn sold it to Village Development. Effective February 21, Respondent AC began to operate the Mayfield Holiday Inn pursuant to an agreement with Village Development. After February 21, the Cornerstone Company was selected by Respondent AC to handle the management of the Mayfield Holiday Inn including hiring.

The purchase by Respondent Orange Place of the Beachwood Holiday Inn from the Bank was delayed until May 13, to obtain necessary financing. The managing partner of Respondent Orange Place is John T. Snavely and Peter L. Snavely serves as trustee. John T. Snavely is also an owner of Respondent Management Services, along with J. Paul Snavely and Peter L. Snavely. On May 13, Respondent Orange Place entered into an agreement with Respondent Management Services to manage the Beachwood Holiday Inn. John T. Snavely signed the agreement on behalf of both Companies (GC Exh. 35). Respondent Management Services immediately commenced the application and hiring process to staff the Beachwood Holiday Inn and continued to manage the property until on or about January 13, 1998.

Respondent Hotel Services came into existence in March 1997, became operational in May 1997, and took over from Respondent Management Services the operation of a number of hotel properties other than the Beachwood Holiday Inn. The office of Respondent Hotel Services is located in the same location as Respondent Management Services. James Gerish served as president of Respondent Management Services from October 1995 to May 1997, when he became president of Respondent Hotel Services, the position he presently holds. He also remained an employee of Respondent Management Services.

On or about January 13, 1998, Respondent Hotel Services began to manage the Beachwood Holiday Inn replacing Respondent Management Services. This change occurred in conjunction with the sale of the facility by Respondent Orange Place to Patriot American Hospitality. Respondent Hotel Services retained all housekeeping employees and their duties and supervision remained unchanged.

B. Analysis

1. Legal precedent

The General Counsel argues that Respondent AC, Respondent Orange Place and Respondents have an obligation to recognize and bargain with the Union on the contention that the Mayfield, and Beachwood Holiday Inns operate with the same housekeeping work force in which its predecessors' unionized employees comprised a majority and those employees service the same customers with the same product as they did for the predecessor. *NLRB v. Burns Security Services,* 406 U.S. 272 (1972); and *Fall River Dyeing v. NLRB,* 482 U.S. 27 (1987).

Initially, it should be noted that the General Counsel has not alleged that Respondent AC, Respondent Orange Place, and Respondents engaged in unfair labor practices by failing to apply the terms of the Lane Hospitality collective-bargaining agreement or by making unilateral changes in working conditions. Rather, the allegations of unfair labor practices are rooted in paragraphs 15, 16, and 21 of the complaint and allege that Respondent AC, Respondent Orange Place, and Respondents failed to recognize and bargain with the Union.

Occasionally, there is a question as to when a bargaining obligation attaches. If it is perfectly clear that an employer intends to hire a majority of its work force from the work force of the predecessor employers, the bargaining obligation matures at that time. However, when a potential successor employer announces changes in working conditions before hiring, its bargaining obligation is not perfectly clear. On those occasions an employer may not become a successor until it actually hires a majority of its work force from the work force of the predecessor employers. Here, although Respondent AC and Respondent Management Services announced changes in working conditions, it did so after initially hiring a majority of its work force from HELP, Inc. Likewise Respondent Hotel Services, without taking new applications or interviewing employees, hired all 17 housekeeping employees from Respondent Management Services. (Cf. *Spruce Up Corp.,* 209 NLRB 194 (1974), enfd. on other grounds 529 F.2d 516 (4th Cir. 1975).

2. The evidence

The record indicates that Lane Hospitality recognized the Union as the designated collective-bargaining representative of a single unit of housekeeping employees at the Mayfield and Beachwood Holiday Inns. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from May 1, 1994, to April 30, 1997 (GC Exh. 2). On or about October 12, 1995, Beck Group Management, Inc. was retained to operate and manage the two facilities. Beck hired HELP, Inc. to provide housekeeping services for the two hotels. In this regard, a comparison of employment records of Lane Hospitality in August and September 1995 (GC Exhs. 3 and 4), with the December 1995 payroll records of HELP, Inc. for the Mayfield and Beachwood Holiday Inns, shows that a majority of the work force was comprised of former Lane Hospitality employees (GC Exh. 12).[3] Indeed, HELP, Inc. recognized the Union as the designated exclusive collective-bargaining representative of its housekeeping employees at the Mayfield and Beachwood Holiday Inns and as of December 21, 1995, agreed to develop a contract proposal to be discussed with the Union in January 1996 (GC Exh. 12).

On or about February 21, Respondent AC began to operate and manage the Mayfield Holiday Inn without a hiatus in operation. Immediately on taking over the operation of the hotel, Respondent AC commenced a top to bottom renovation. During the period from February 1996 to June 1997, hotel floors were periodically closed to accommodate room renovations that resulted in fewer guests staying at the hotel. Under these circumstances, a smaller complement of employees was needed to staff the facility. Likewise, the hotel requires a smaller staff

[3] When HELP, Inc. took over the management of the Mayfield and Beachwood Holiday Inns on October 12, 1995, with a complement of 34 employees, it employed 19 of the former Lane Hospitality employees. As of December 21, 1995, 20 of the 33 housekeeping staff were former Lane Hospitality employees.

during the winter months as occupancy normally declines during this period.

In comparing the payroll records for the housekeeping employees of HELP, Inc. in December 1995 (GC Exh. 12), with the payroll records for the housekeeping staff at the Mayfield Holiday Inn for February, March, and April 1996 (GC Exhs. 20, 21, and 40), it shows that a majority of the Mayfield Holiday Inn housekeeping employees are comprised of former HELP, Inc. housekeeping employees.[4]

On May 13, Respondent Orange Place purchased the Beachwood Holiday Inn and on the same date entered into a management agreement with Respondent Management Services to operate the facility.

In comparing the payroll records for the housekeeping employees of HELP, Inc. in December 1995 (GC Exh. 12), with the payroll records for the housekeeping staff at the Beachwood Holiday Inn for the payroll period ending May 31 (GC Exh. 36), it shows that a majority of the Beachwood Holiday Inn housekeeping employees are comprised of former HELP, Inc. housekeeping employees.[5]

Thereafter, on January 13, 1998, Respondent Hotel Services was retained to operate and manage the Beachwood Holiday Inn. Gerish testified that all 17 housekeeping employees were retained, without applications or interviews, by Respondent Hotel Services when they took over the management of the Beachwood Holiday Inn from Respondent Management Services.

3. Further findings and conclusions

The General Counsel alleges in paragraph 13 of the complaint that Respondent Orange Place and Respondent Management Services administered a common labor policy for the employees of the Beachwood Holiday Inn and accordingly are joint employers of the employees of the hotel. Additionally in paragraph 20 of the complaint, the General Counsel asserts that Respondent Management Services and Respondent Hotel Services have been affiliated business enterprises and constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

To determine whether two separate entities are a "single employer," the Board considers four factors: (1) common ownership; (2) common management; (3) interrelation of operations; and (4) centralized control of labor relations. See *South Prairie Construction Co. v. Operating Engineers Local 627,* 425 U.S. 800, 802 fn. 3 (1976) (quoting *Radio Union v. Broadcast Service of Mobile, Inc.,* 380 U.S. 255, 256 (1965)).

To find a "single employer," all four factors need not be present. *NLRB v. Don Burgess Construction Corp.,* 596 F.2d 378, 384 (9th Cir. 1979). "Single employer status ultimately depends on all the circumstances of the case and is characterized by an absence of an arms length relationship found among integrated companies." *NLRB v. Big Bear Supermarkets No. 3,* 640 F.2d 924, 928 (9th Cir. 1980).

James Gerish credibly testified that Respondent Orange Place is an Ohio limited partnership and is engaged in the ownership and operation of the Beachwood Holiday Inn. Likewise, Respondent Management Services and Respondent Hotel Services are an Ohio corporation and an Ohio limited liability company, respectively, who share offices in Willoughby Hills, Ohio and are engaged in the management of hotels.[6] Gerish worked for Respondent Management Services from 1981 to May 1997, serving as president since October 1995 and became president of Respondent Hotel Services in May 1997, although he still remained an employee of Respondent Management Services. He acknowledged that the officers for Respondent Management Services and the officers for Respondent Hotel Services when it became operational in May 1997, remained the same.

On May 13, when Respondent Orange Place purchased the Beachwood Holiday Inn, John T. Snavely served as the managing partner and Peter L. Snavely held the position of trustee. Both of the Snavely's are owners of Respondent Management Services and John T. Snavely signed the Beachwood Holiday Inn management agreement between Respondent Orange Place and Respondent Management Services on behalf of both Companies (GC Exh. 35).

Based on the foregoing, I find that Respondent Orange Place and Respondent Management Services became joint employers of the employees of the Beachwood Holiday Inn effective May 13.

Likewise, I find that Respondent Management Services and Respondent Hotel Services have been affiliated business enterprises with common officers, ownership, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services; and have interchanged personnel with each other, and therefore constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

By letter dated March 11, the Union requested that Respondent AC recognize it as the exclusive collective-bargaining

[4] Respondent AC payroll records for the week ending March 2, show a total complement of 14 employees, 10 of whom were former HELP, Inc. employees. One of these 14 employees, executive housekeeper Warnell Ford, is a Sec. 2(11) supervisor (Tr. 352). Patricia Tinker is included in the complement of 14 employees and encumbers the position of assistant housekeeper. That position appears, likewise, to be a Sec. 2(11) supervisor based on the testimony of Respondent AC General Manager Thomas Farinacci (Tr. 358–361). Since I find that the Union represented a majority of Respondent AC employees on March 2 even if those two positions are included, it is not necessary to address the assistant housekeeper supervisory issue. It should be noted, however, that the incumbent assistant housekeeper was a former HELP, Inc. employee. The records (GC Exhs. 20 and 21), likewise show that as of February 21, 12 of 14 Respondent AC housekeeping employees were former HELP, Inc. employees.

[5] When Respondent Management Services took over the operation of the Beachwood Holiday Inn on May 13, it hired 22 employees. According to Gerish's testimony and affidavit, 12 of these individuals were former HELP, Inc. employees (GC Exh. 1(ii), Item 4). Additionally, when comparing the Beachwood Holiday Inn payroll records dated May 31, that show a complement of 22 housekeeping employees (GC Exh. 36—Departments 584510 and 584525), with the HELP, Inc. Beachwood Holiday Inn housekeeping employees, it shows that 12 of the employees were former HELP, Inc. employees.

[6] The parties stipulated that since its inception Respondent Hotel Services sole member, as a limited liability company, is Respondent Management Services (Tr. 263).

representative of the housekeeping employees at the Mayfield Holiday Inn. On March 19, Respondent AC refused to recognize and bargain with the Union. By letter dated May 24, the Union requested that Respondent Orange Place recognize it as the exclusive collective-bargaining representative of the housekeeping employees at the Beachwood Holiday Inn. On May 29, Respondent Orange Place refused to recognize and bargain with the Union. By letter dated May 4, 1998, the Union requested that Respondent Hotel Services recognize it as the exclusive collective-bargaining representative of the housekeeping employees at the Beachwood Holiday Inn. On May 8, 1998, Respondent Hotel Services refused to recognize and bargain with the Union.

Respondent AC, Respondent Orange Place, and Respondents cite *Burns Security Services* and *Fall River Dyeing* in arguing that it has no obligation to bargain. They argue that the four main inquiries into whether there is a bargaining obligation include (1) whether a union continues to enjoy majority support; (2) whether the new employer is substantially the same as the predecessor; (3) whether the old bargaining units are still appropriate; and (4) whether there was any hiatus between the closing of the employers. All admit there is no hiatus in the present situation.

In regard to the *Fall River Dyeing* criteria, the evidence shows that both Respondent AC, Respondent Orange Place, and Respondents hired a number of former unit employees from HELP, Inc. and that those employees constitute a majority of the housekeeping employees at the Mayfield and Beachwood Holiday Inns. Those employees started work with Respondent AC, Respondent Orange Place, and Respondents in the same location and performed the same duties as each had for HELP, Inc. on February 21, May 13, and on January 13, 1998, when Respondent Hotel Services hired all 17 housekeeping employees from Respondent Management Services. There is a presumption that those employees continue to support their respective union and Respondent AC, Respondent Orange Place, and Respondents offered nothing to overcome that presumption. Here, the evidence shows that the employees used the same equipment, to supply the same services to the guests who stayed at the Mayfield and Beachwood Holiday Inns.

Critical to a finding of successorship is a determination that the bargaining unit of the predecessor employer remains appropriate. Factors that occurred when and before the bargaining obligation attached as opposed to actions taken by Respondent AC, Respondent Orange Place, and Respondents at a point in time after their bargaining obligation matured are of significant importance.

Both Respondent AC, Respondent Orange Place, and Respondents argue that only a unit of housekeeping employees as it is presently constituted at both facilities would be appropriate and based on the inclusion of laundry employees and other employee classifications in their housekeeping units, the Union did not and does not represent a majority of employees. Contrary to that position, I find that the true issue is not whether the overall unit would be appropriate but whether the former single multilocation bargaining units at the Mayfield and Beachwood Holiday Inns continue to be appropriate after the sale to Respondent AC, Respondent Orange Place, and Respondents. An overall unit may also be appropriate but that question is immaterial to the complaint allegations.

I conclude that the employees in the HELP, Inc. multilocation units at the Mayfield and Beachwood Holiday Inns retained the same skills and performed identical duties after the sale of the facilities to Respondent AC, Respondent Orange Place, and the Respondents. There was no hiatus in the operation of either hotel and the employees performed the same services for hotel guests. Thus, I conclude that the multilocation units are appropriate and the record supports a finding that when Respondent AC, Respondent Orange Place, and Respondents hired a majority of the employees represented by the Union to staff both the Mayfield and Beachwood Holiday Inns, they had a corresponding obligation to recognize and bargain with the Union on request. By denying the Union's request to recognize and bargain on behalf of the employees at the Mayfield and Beachwoood Holiday Inns, Respondent AC, Respondent Orange Place, and Respondents violated Section 8(a)(1) and (5) of the Act. *Jessie Beck*'s *Riverside Hotel,* 279 NLRB 405 (1986).

C. The Information Request

The General Counsel alleges in paragraph 17 of the complaint that on March 11, the Union requested Respondent AC to furnish certain information including the names, addresses, and telephone numbers of its housekeeping employees. Since March 19, Respondent AC has refused to provide the requested information. In paragraph 18 of the complaint, the General Counsel alleges that on May 24, the Union requested Respondent Orange Place to furnish certain information including the names, addresses, and telephone numbers of its housekeeping employees. Since May 29, Respondent Orange Place has refused to provide the requested information. Lastly, the General Counsel alleges in paragraph 22 of the complaint that on May 4, 1998, the Union requested Respondent Hotel Services to furnish certain information including the names, addresses, and telephone numbers of its housekeeping employees. Since May 8, 1998, Respondent Hotel Services has refused to provide the requested information.

Respondent AC, Respondent Orange Place, and Respondent Hotel Services argue that since they are not successor employers there is no need to provide the requested information. As discussed earlier, I rejected that position.

Generally, the Union requested the names, addresses, and telephone numbers of the housekeeping employees employed by each employer. There is no contention that the requested information is irrelevant to the Union's function as the exclusive collective bargaining representative if this status existed.

It is well established that an employer has an obligation to supply requested information that is reasonably necessary to the exclusive collective-bargaining representative's responsibilities. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149 (1956). The information requested by the Union as it relates to unit employees is presumptively relevant to collective bargaining. *Harco Laboratories,* 271 NLRB 1397 (1984); *Barnard Engineering Co.,* 282 NLRB 617 (1987). Respondent AC, Respondent Orange Place, and Respondent Hotel Services has not rebutted this presumption.

Nor did they raise issues of relevance or lack of necessity in denying the Union's information requests. For these reasons, I find that the Union is entitled to the information requested and conclude that in refusing to provide the information Respondent AC, Respondent Orange Place, and Respondent Hotel Services violated Section 8(a)(1) and (5) of the Act.

D. Affirmative Defenses

Respondent AC, Respondent Orange Place, and Respondents argue that the subject unfair labor practice charges are untimely as the Union did not file them within 6 months from the time that HELP, Inc. became a successor to Lane Associates. I reject this argument for the following reasons. First, there is no dispute that Respondent AC purchased the Mayfield Holiday Inn on February 21, and Respondent Orange Place purchased the Beachwood Holiday Inn on May 13. The charges in Cases 8–CA–28382–1 and 8–CA–28382–2 were filed on July 11. It was not until March 19 that Respondent AC refused to recognize and bargain with the Union and on May 29, Respondent Orange Place likewise refused to recognize and bargain with the Union. Under these circumstances, it is evident that the charges filed on July 11 were timely. Additionally, I reject any argument that asserts the unfair labor practice charges should have been filed in December 1995 against HELP, Inc. In this regard, there was no reason for the Union to file such charges since HELP, Inc. recognized and bargained with the Union on December 14,1995, as the exclusive collective-bargaining representative of its housekeeping employees at the Mayfield and Beachwood Holiday Inns. As discussed above, it was not until Respondent AC and Respondent Orange Place took over the operation and management of the two facilities that a refusal to recognize and bargain with the Union took effect. Likewise, I also find that the charge in Case 8–CA–29904 was timely as it was filed 4 days after Respondent Hotel Services refused to recognize and bargain with the Union. Based on this recitation, I also reject alternative arguments of laches and that the Union abandoned the bargaining unit.

CONCLUSIONS OF LAW

1. Respondent AC, Respondent Orange Place, and Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees International Union Local No. 47 is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All housekeeping employees employed by Respondent AC at its facility Located at 780 Beta Drive, Mayfield Village, Ohio but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.
>
> All housekeeping employees employed by Respondent Orange Place, Respondent Management Services and Respondent Hotel Services at its 3750 Orange Place, Beachwood, Ohio facility, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

4. Respondent AC, as a successor to HELP, Inc., violated Section 8(a)(1) and (5) of the Act by since on or about March 19, 1996, refusing to recognize and bargain with the Union as the exclusive representative of employees in the above-described collective-bargaining unit.

5. Respondent Orange Place and Respondent Management Services, as a successor to HELP, Inc., violated Section 8(a)(1) and (5) of the Act by since on or about May 29, 1996, refusing to recognize and bargain with the Union as the exclusive representative of employees in the above-described collective-bargaining unit.

6. Respondent Hotel Services, as a successor to Respondent Management Services, violated Section 8(a)(1) and (5) of the Act by since on or about May 8, 1998, refusing to recognize and bargain with the Union as the exclusive representative of employees in the above-described collective-bargaining unit.

7. Respondent AC, Respondent Orange Place, and Respondent Hotel Services violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Union the information requested on March 11 and May 24, 1996, and May 4, 1998, that was reasonably necessary to the Union's responsibilities as the exclusive representative of employees in the above-described collective-bargaining units.

8. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent AC, Respondent Orange Place, and Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent AC, Respondent Orange Place, and Respondents have illegally failed and refused to recognize and bargain with Service Employees International Union Local No. 47 in the respective collective-bargaining units, I shall order them to recognize the Union as exclusive collective-bargaining representatives of its employees in the above-described bargaining units and on request by the Union, meet and bargain in good faith.

Additionally, I shall order Respondent AC, Respondent Orange Place, and Respondent Hotel Services to supply the Union, on request, the relevant and necessary information it requested on March 11 and May 24, 1996, and on May 4, 1998.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

A. Respondent AC Management, Inc., d/b/a Mayfield Holiday Inn (AC) of Mayfield Village, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Failing and refusing to recognize and bargain with Service Employees International Union Local No. 47 in good faith as the exclusive bargaining representative of the employees in the following appropriate unit:

> All housekeeping employees employed by Respondent AC at its facility located at 780 Beta Drive, Mayfield Village, Ohio but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to supply the Union, on their request, relevant information reasonably necessary for the proper performance of their duties as the exclusive bargaining representative of the employees in the bargaining unit.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with Service Employees International Union Local No. 47 as the exclusive collective-bargaining representative in the respective unit concerning terms and conditions of employment and, if understandings are reached, embody the understandings in a signed agreement.

(b) Furnish to the Union, on request, and in a timely fashion, the information requested by their letter of March 11, 1996.

(c) Within 14 days after service by the Region, post at its facility in Mayfield Village, Ohio, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 21, 1996.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[Recommended Order for Respondent Orange Place, Respondent Management Services, and Respondent Hotel Services omitted from publication.]

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[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."